

## SENATE BILL No. 325

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-6-2-1.5; IC 20-33-8-9; IC 34-13-3-3.

**Synopsis:** Teacher immunity regarding disciplinary action. Allows a teacher to take an action that is reasonably necessary to maintain discipline in the school, and provides immunity from civil liability for reasonable actions taken to maintain discipline in the school. Specifies that the attorney general shall defend a teacher in a civil suit if the attorney general determines that the suit has arisen out of an act that the teacher in good faith believed was within the scope of the person's duties in taking an action reasonably necessary to maintain discipline in the school.

**Effective:** July 1, 2009.

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January 8, 2009, read first time and referred to Committee on Education and Career Development.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## SENATE BILL No. 325

A BILL FOR AN ACT to amend the Indiana Code concerning education.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 4-6-2-1.5, AS AMENDED BY P.L.78-2005,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2009]: Sec. 1.5. (a) Whenever any state governmental official  
4 or employee, whether elected or appointed, is made a party to a suit,  
5 and the attorney general determines that said suit has arisen out of an  
6 act which such official or employee in good faith believed to be within  
7 the scope of the official's or employee's duties as prescribed by statute  
8 or duly adopted regulation, the attorney general shall defend such  
9 person throughout such action.  
10 (b) Whenever a teacher (as defined in IC 20-18-2-22) is made a  
11 party to a civil suit, and the attorney general determines that the suit  
12 has arisen out of an act that the teacher in good faith believed was  
13 within the scope of the teacher's duties in:  
14 (1) enforcing discipline policies developed under IC 20-33-8-12;  
15 or  
16 (2) **taking an action reasonably necessary to maintain**  
17 **discipline in the school;**



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the attorney general shall defend the teacher throughout the action.

(c) Whenever a school corporation (as defined in IC 20-26-2-4) is made a party to a civil suit and the attorney general determines that the suit has arisen out of an act authorized under IC 20-30-5-0.5 or IC 20-30-5-4.5, the attorney general shall defend the school corporation throughout the action.

(d) A determination by the attorney general under subsection (a), (b), or (c) shall not be admitted as evidence in the trial of any such civil action for damages.

(e) Nothing in this chapter shall be construed to deprive any such person of the person's right to select counsel of the person's own choice at the person's own expense.

SECTION 2. IC 20-33-8-9, AS ADDED BY P.L.1-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. (a) This section applies to an individual who:

- (1) is a teacher or other school staff member; and
- (2) has students under the individual's charge.

(b) An individual may take any action that is reasonably necessary to:

- (1) carry out or to prevent an interference with an educational function that the individual supervises; **or**
- (2) **maintain discipline in the school.**

(c) Subject to rules of the governing body and the administrative staff, an individual may remove a student for a period that does not exceed five (5) school days from an educational function supervised by the individual or another individual who is a teacher or other school staff member.

SECTION 3. IC 34-13-3-3, AS AMENDED BY P.L.47-2006, SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from the following:

- (1) The natural condition of unimproved property.
- (2) The condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person for a purpose that is not foreseeable.
- (3) The temporary condition of a public thoroughfare or extreme sport area that results from weather.
- (4) The condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area.
- (5) The design, construction, control, operation, or normal

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condition of an extreme sport area, if all entrances to the extreme sport area are marked with:

- (A) a set of rules governing the use of the extreme sport area;
- (B) a warning concerning the hazards and dangers associated with the use of the extreme sport area; and
- (C) a statement that the extreme sport area may be used only by persons operating extreme sport equipment.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain extreme sports areas in a reasonably safe condition.

(6) The initiation of a judicial or an administrative proceeding.

(7) The performance of a discretionary function; however, the provision of medical or optical care as provided in IC 34-6-2-38 shall be considered as a ministerial act.

(8) The adoption and enforcement of or failure to adopt or enforce a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment.

(9) An act or omission performed in good faith and without malice under the apparent authority of a statute which is invalid if the employee would not have been liable had the statute been valid.

(10) The act or omission of anyone other than the governmental entity or the governmental entity's employee.

(11) The issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law.

(12) Failure to make an inspection, or making an inadequate or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety.

(13) Entry upon any property where the entry is expressly or impliedly authorized by law.

(14) Misrepresentation if unintentional.

(15) Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission.

(16) Injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by section 7 of this chapter.

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(17) Injury to the person or property of a person under supervision of a governmental entity and who is:

(A) on probation; or

(B) assigned to an alcohol and drug services program under IC 12-23, a minimum security release program under IC 11-10-8, a pretrial conditional release program under IC 35-33-8, or a community corrections program under IC 11-12.

(18) Design of a highway (as defined in IC 9-13-2-73), toll road project (as defined in IC 8-15-2-4(4)), tollway (as defined in IC 8-15-3-7), or project (as defined in IC 8-15.7-2-14) if the claimed loss occurs at least twenty (20) years after the public highway, toll road project, tollway, or project was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.

(19) Development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system.

(20) Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably:

(A) under a discipline policy adopted under IC 20-33-8-7(b);  
or

**(B) to maintain discipline in the school.**

(21) An error resulting from or caused by a failure to recognize the year 1999, 2000, or a subsequent year, including an incorrect date or incorrect mechanical or electronic interpretation of a date, that is produced, calculated, or generated by:

(A) a computer;

(B) an information system; or

(C) equipment using microchips;

that is owned or operated by a governmental entity. However, this subdivision does not apply to acts or omissions amounting to gross negligence, willful or wanton misconduct, or intentional misconduct. For purposes of this subdivision, evidence of gross negligence may be established by a party by showing failure of a governmental entity to undertake an effort to review, analyze, remediate, and test its electronic information systems or by showing failure of a governmental entity to abate, upon notice, an electronic information system error that caused damage or loss. However, this subdivision expires June 30, 2003.

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- 1 (22) An act or omission performed in good faith under the  
2 apparent authority of a court order described in IC 35-46-1-15.1  
3 that is invalid, including an arrest or imprisonment related to the  
4 enforcement of the court order, if the governmental entity or  
5 employee would not have been liable had the court order been  
6 valid.
- 7 (23) An act taken to investigate or remediate hazardous  
8 substances, petroleum, or other pollutants associated with a  
9 brownfield (as defined in IC 13-11-2-19.3) unless:
- 10 (A) the loss is a result of reckless conduct; or  
11 (B) the governmental entity was responsible for the initial  
12 placement of the hazardous substances, petroleum, or other  
13 pollutants on the brownfield.

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